

Federal Communications Commission
445 12th Street, S.W.
Washington D.C. 20554

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
)	
Acceleration of Broadband Deployment)	WC Docket No. 11-59
Expanding the Reach and Reducing the Cost of)	
Broadband Deployment by Improving Policies)	
Regarding Public Rights of Way and Wireless)	
Facilities Siting)	

COMMENTS OF CITY OF ST. CHARLES, IL

The City of St. Charles (St. Charles), Illinois files these comments in response to the Notice of Inquiry (“NOI”), released April 7, 2011, in the above-entitled proceeding. Through these comments, St. Charles seeks to provide the Commission with basic information regarding its local right-of-way and facility management practices and charges.¹ The Commission should not interfere with these local policies here. St. Charles has developed considerable expertise applying its policies to protect and further public safety, economic development, and other community interests. By adopting rules in this area, the Commission could disrupt this process at substantial cost to local taxpayers and to the local economy. We believe that a basic respect for federalism, a fair reading of the Constitution and the Communications Act, and an honest assessment of the Commission’s limited expertise on local land use matters all point to the same conclusion: this is no place for federal regulation.

¹We use the term “charges” to include both any cost recovery that is part of right-of-way and facility management (such as permitting fees), as well as other compensation we may receive from communications companies for use of the rights-of-way and other facilities consistent with state and local law.

St. Charles has successfully managed its property to encourage deployment of broadband networks such as Comcast , AT&T, as well as the City's own fiber network. As a result, broadband service is available to 100% of the households and businesses in our jurisdiction. There is no evidence that our policies or charges with respect to placement of facilities in the rights-of-way or on City property (such as water towers) have discouraged broadband deployment. Our community *welcomes* broadband deployment, and our policies allow us to work with any company willing to provide service. No company has cited our policies as a reason that it will not provide service. We believe our policies have helped to *avoid* problems and delays in broadband deployment by ensuring that broadband deployment goes smoothly for both the providers who follow the rules and the larger community. For example, AT&T selected St. Charles as one of the first communities to deploy their broadband service because of our responsive process and timely right-of-way permitting. On the other hand, we experienced significant opposition from the incumbants providers when St. Charles considered providing broadband services to the community over our municipal fiber system in an effort to increase service at lower cost.

In response to the NOI, St. Charles provides the following information:

I. *Application Procedures, Forms, Substantive Requirements, and Charges.*

The Commission asks whether all necessary application procedures, forms, substantive requirements, and charges are readily available.²

St. Charles provides all permitting requirements in the city web site which can be viewed on line at <http://stcharlesil.gov/codebook/Title-13/T13-CH22.pdf> . This code section identifies the application procedures, fees, required response times, general construction standards, traffic

²NOI ¶ 14.

control requirements, location of facilities, construction methods and materials and vegetation control along with other aspects of our permitting process.

II. *Sources of Delays.*

The Commission asks what factors are chiefly responsible to the extent applications are not processed in a timely fashion. The Commission also asks about errors or omissions in applications.³

In St. Charles, most applications are processed very quickly. However, we have provisions in our code to deal with delays. Section 13.22.005.B provides for the city to identify the approved location to the communication provider within 25 working days after all required information has been received by the city. If the city does not meet the 25 day requirement, the provider may proceed without a permit. This provision has assured the city to be responsive to the needs of the communication providers. The most common cause for delay is the failure of the provider to submit required data.

II. *Improvements.*

The Commission asks whether there are particular practices that can improve processing.⁴

St. Charles has recognized a number of practices that have improved the process, such as the response time requirement stated above. We have engaged the contractors that do business in the city to participate thru surveys on how our processes can be improved to be responsive to

³ *Id.*

⁴ NOI ¶¶ 14, 29.

the contractors. By implementation of a process improvement procedure, the city reviewed the responses of contractors and designed our process to assure support for broadband development.

IV. *Permitting Charges.*

The Commission seeks data “on current permitting charges, including all recurring and non-recurring charges, as well as any application, administrative, or processing fees.”

Specifically, the Commission asks commenters to identify:

- the type of facilities for which such charges are assessed;
- how such charges are structured (e.g., per foot or percent of revenue in the case of rights of way fees);
- whether the community is subject to comprehensive state franchising or rights-of way-laws;
- whether the charges are published in advance or individually negotiated, designed to approximate market rates or merely recover costs (direct and/or indirect), and accompanied by comprehensive terms, and conditions; and
- the value of any in-kind contributions required for access or permit approval.

The Commission further asks whether such charges are related to impacts on the local community, such as pavement restoration costs for projects that involve trenching in roadways.⁵

In St. Charles, our fee structures are based on the actual cost the city incurs for administration and engineering services relative to the processing of the permit requests. In most cases, there are no charges. Contractors are required to post a bond to cover costs for damages to rights-of-way. If there is a large project that will require significant engineering or administrative manpower, the contractor will be billed the cost incurred.

⁵ NOI ¶ 17.

V. *Local Policy Objectives.*

The Commission asks what “policy goals and other objectives” underlie the local practices and charges in this area.⁶

In St. Charles, our policies are designed to achieve the following:

Facilitate the responsible deployment of services; make the services broadly available; ensure public safety; avoid traffic disruption; maintain and repair roadways; prevent public disruption and damage to abutting property; minimize accelerated deterioration to roads that accompanies street cuts; satisfy aesthetic, environmental, or historic preservation concerns; avoid damage to the property of others; and, obtain fair compensation for use of public property.

VI. *Possible Commission Actions.*

Finally, the Commission asks what actions the Commission might take in this area.⁷

As noted above, St. Charles strongly urges the FCC to refrain from regulating local right-of-way management and facility placement processes. These are highly fact-specific matters, which turn on local engineering practices, local environmental and historical conditions, local traffic and economic development patterns, and other significant community concerns and circumstances. These matters are managed by local staffs with considerable expertise. Imposing a federal regulatory regime would create unnecessary costs for our community, and it would have the potential to undermine important local policies. Likewise, Commission regulation of charges for use of the rights-of-way could have significant impacts on the community, and may actually make it infeasible to continue to maintain or provide important public services. For example, St. Charles currently provides broadband services to the local schools under an intergovernmental agreement that may not be cost effective with additional regulated charges.

⁶ NOI ¶ 22.

⁷ NOI ¶ 36.

If the Commission feels compelled to act in this area at all, it should limit itself to voluntary programs and educational activities, and to implementing its own recommendations in the National Broadband Plan for working cooperatively with state and local governments.

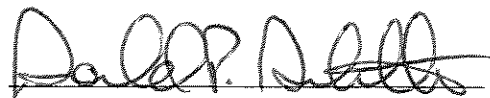
CONCLUSION

St. Charles urges the Commission to conclude that right-of-way and facility management and charges are not impeding broadband deployment. As indicated above, in St. Charles, our policies and procedures are designed to protect important local interests, and have done so for many years. There is no evidence that the policies have impaired any company from providing broadband service here, and there are many reasons to believe that federal regulations would prove costly and disruptive to our community.

Respectfully submitted,

City of St. Charles, IL

By:

A handwritten signature in black ink, appearing to read "Donald P. DeWitte", written over a horizontal line.

Donald P. DeWitte
Mayor

cc: National League of Cities, Bonavita@nlc.org
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